IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 5/2004

1. Ramabai S. N. Gaunekar,
w/o. Late Shridhar R.N. Gaunekar,
housewife,

2. Rajendra S.N. Gaunekar,
s/o. Late Shridhar R.N. Gaunekar,
major in age,
Both residents of Varcondem,
Ponda, Goa. ..... Petitioners.

V/s.

1. Shri Santosh Gajanan Naik,
s/o. Late Gajanan E. Naik,
major of age, unmarried,
r/o. Varcondem, Ponda, Goa.

2. Shri Vikas Gajanan Naik,
s/o. Late Gajanan E. Naik,
major of age, married,
r/o. Varcondem, Ponda, Goa. ..... Respondents

Mr. V. A. Lawande, Advocate for the petitioners.

Mr. A. D. Bhobe, Advocate for the respondents.

CORAM : P.V. KAKDE, J.

Date : 22nd August, 2006.

O R A L J U D G M E N T :

Heard both the parties. Perused the record.

2. This civil revision application is aimed against the order passed by the Civil Judge, Jr. Division, Ponda dated 29/01/2004 rejecting the application of defendants No.1 and 2 which was under Order VII, Rule 11 of the Code of Civil Procedure, seeking rejection of the plaint.

3. It was the case of the defendants that in the plaint, the plaintiffs made averments that they are tenants of the suit property and defendants No.1 and 2 were their landlords. Section 8-A of the Goa Agricultural Tenancy Act, 1964 ("the said Act" for short) provides for all reliefs claimed by the plaintiffs in the suit; whereas Section 58 of the said Act bars jurisdiction of the Civil Court to deal with or decide matters which are to be dealt with and decided by the authorities under the said Act. The plaintiff filed the suit for : (a) permanent injunction restraining the defendants from interfering in the suit property marked "C" in the plan and a structure "Gadda" in their possession and enjoyment; (b) for declaring the sale deed between defendants No.1, 2 and 3 as null and void; and (c) restoring the land along with the structure/gadda to its original position.

On hearing both the parties, the lower Court was of the view that the application was devoid of any merit. Hence came to be rejected. Hence the present revision application. Pending the revision application, Civil Application No. 40/04 was filed seeking stay of Regular Civil Suit No.65/03. While adjudicating that matter,

by order dated 16/7/2004, this Court in para 4 made certain observations which, in my view, would be sufficient to dispose of this application itself and this Court should dispose of the application along with the stay application itself.

4. On plain reading of the provisions of Section 8-A of the said Act, it was found that the Mamlatdar would have jurisdiction to deal with prayer clauses (a) and (c). However, prayer clause (d) is within the jurisdiction of the Civil Court since, on prima facie reading it can be gathered that the Mamlatdar has no jurisdiction to decide the subject-matter and grant the relief in terms of prayer clause (d). The “gadda” in respect of which relief is sought in terms of prayer clause (a) is not the subject-matter of the agricultural tenancy. With these observations, the application came to be disposed of holding that the suit would proceed before the Civil Court in respect of prayer clause (d). This reasoning is also good in law to decide the present application. It would be for the Civil Court to determine whether the issues involved in clauses (a) and (c) are required to be referred to the Mamlatdar or to be adjudicated by the Court itself.

5. With this observation, the application stands disposed of with no order as to costs.

P.V. KAKADE, J.

ssm.